Study on the working of the Anti-defection Law

1957. SHRI MANOJ BHATTACHARYA: Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether Government have carried out any study on the working of the Anti-defection Law which was put in place in 1985 through an amendment of the Constitution by adding Tenth Schedule thereto; and

(b) if so, the details of the study so made?

THE MINISTER OF LAW AND JUSTICE (SHRI ARUN JAITLEY): (a) Yes, Sir.

(b) A Statement is laid on the Table of the House.

Statement

(1) *Recommendation of Dinesh Goswami Committee:—*

(i) Provisions for disqualification should be limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or absention from voting by a member contrary to his party's directions or whip only in respect of a motion of vote of confidence or a motion amounting to no confidence or Money Bill or motion of vote of thanks to the President's Address. Further, the Deputy Speaker of the House of the People or the Legislative Assembly of a State, the Deputy Chairman of Council of States or Legislative Council of a State or a person occupying the Chair for the time being in the absence of any elected Presiding Officer, as the case may be, should not incur disqualification if he chooses to abstain from voting contrary to his party's directions or whip.

(ii) The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question whould be referred for determination as in the case of any other post-election disqualification of a member;

(iii) A nominated member of the House should incur disqualification if he joins any political party at any period of time.

(2) *Suggestions emanating from Judgement of the Supreme Court:*—

(i) The Supreme Court in the case of Kihota Hollohon *Vs* Zachilhu and others, [1992(1) SCALE 338-364(4)] by a majority judgement upheld the validity of the Tenth Schedule to the Constitution of India except paragraph 7 thereof. Paragraph 7 barred jurisdiction of courts in respect of any matter connected with disqualification of a member of House under the Tenth Schedule. The implication of the judgement is that the decisions of the Presiding Officer could be scrutinised by the Courts on the ground that in deciding the issues of defection, they were acting as tribunals.

(ii) Pursuant to aforesaid judgment of the Supreme Court, a suggestion was made in a conference of the Presiding Officers of various State Legislatures which was presided over by the Speaker held in 1992 that a privision may be made in the Anti-defection Law to provide for an appellate authority which would hear appeals from the judgment of the Presiding Officers so that decisions of the Presiding Officer were not directly scrutinised by the Courts.

(iii) Pursuant to the aforesaid suggestion, one of the proposals regarding constitution of an appellate authority was that in case of Members of Parliament, such authority may be President of India who shall obtain opinion of a Committee consisting of three members indicated in section 3(2) of the Judges Inquiries Act, 1968, namely, a Judge of the Supreme Court, Chief Justice of a High Court and a distinguished jurist and shall act according to such opinion. Similar provision was proposed for Members of State Legislatures.

(3) *Recommendations of the Election Commission of India.*—

Anti-defection law may be amended leaving it to the President and the Governors concerned to decide cases of disqualification under the Tenth Schedule, after obtaining the opinion of the Election Commission.

(4) *Recommendations of the Law Commission in its 170th Report:*—

(i) Omission of definition of legislature party.

(ii) New definition of political party to include pre-election fronts and coalitions for the purpose of Tenth Schedule.

(iii) Doing away with the concept of split and merger.

(iv) The question of disqualification for membership of Lok Sabha/ State Legislative Assemblies, after election be entrusted to the President/Governor for decision.

(5) *Recommendation of the National Commission to Review the Working of the Constitution:*—

The Provision of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting—whether individually or in groups—from the party or the alliance of parties, on whose ticket they had been elected, must resign from their Parliamentary or Assembly seats and must contest fresh elections. In other words such persons should lose their membership and the protection under the provision of split etc. should be scrapped. The defectors should also be debarred from holding any public office as Ministers or any other remunerative political post for at least the duration of the remaining term of the existing Legislature of unitl, the next fresh elections whichever is earlier. The vote cast by a defector to topple a Government should be treated as invalid. Further, the power to decide question regarding disqualification on ground of defection should vest in the Election Commission instead of the Chairman or Speaker of the House concerned.

Misuse of the Contempt of Courts Act, 1971

1958. PROF. RAM DEO BHANDARY: Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether Government have assessed misuse of provisions of the Contempt of Courts Act, 1971;

(b) if so, the details thereof;